Supreme Court, U.S.
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No. 01-

IN THE

Supreme Court of the United States

JAE-WOO CHA,

Petitioner,

v.

KOREAN PRESBYTERIAN CHURCH OF WASHINGTON, CHI WHAN KIM, TAEK YONG KIM, YONG HO KIM, DAVID KWANG SOO HAN, KO DO SIK, JUNG KUK KIM,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

JAMES J. HARNEY
Counsel of Record
WILLIAM E. HASSAN
KIMBERLEY A. MURPHY
RYAN M. MATTSON
HALE & HASSAN, CARLSON & PENN, PLC
Attorneys for Petitioner
10511 Judicial Drive
Fairfax, Virginia 22030
(703) 591-4900

172051

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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QUESTIONS PRESENTED

I. Whether the "neutral principles of law" approach, pronounced by this court pursuant to the First Amendment to the United States Constitution, extends beyond property disputes to tort and contract claims.

II. Whether the Virginia Supreme Court erred in its analysis by creating a bright-line rule resulting in absolute immunity to defendant churches and their clergy in tort and contract disputes.

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Petitioner, Jae-Woo Cha, by counsel, respectfully prays that a writ of certiorari issues to the Supreme Court of the Commonwealth of Virginia, to review an order entered in this proceeding on November 2, 2001.

OPINIONS BELOW

The opinion rendered by the Supreme Court of the Commonwealth of Virginia is officially reported as *Cha v. Korean Presbyterian Church*, 262 Va. 604, 553 S.E.2d 511 (Va. 2001). The opinion rendered by the Fairfax County Circuit Court on August 23, 2000, authored by the Honorable Jonathon C. Thatcher, is officially reported at *Cha v. Korean Presbyterian Church*, 55 Va. Cir. 480, 2000 Va. Cir. LEXIS 404 (Ffx. Co. Aug. 23, 2000).

STATEMENT OF JURISDICTION

This Court may take jurisdiction pursuant to 28 U.S.C. § 1257(a) (2001), which section confers subject matter jurisdiction upon this Court for the review of final judgments by the highest court of the state in which the case was pending.

The Fairfax County Circuit Court entered a final order dismissing Petitioner's claims on August 23, 2000, sustaining a demurrer filed by Respondents. The Supreme Court of the Commonwealth of Virginia affirmed the lower court's decision on November 2, 2001.

This Court has jurisdiction due to the following reasons: (1) the Supreme Court of Virginia upheld the dismissal of Petitioner's causes of action pursuant to its interpretation of the First Amendment to the United States Constitution, which

is in conflict with other state courts of last resort; (2) the Supreme Court of Virginia ruled on an important question of federal constitutional law that amplifies the conflicts within the United States courts of appeal which necessitates resolution by this Court; and (3) this Court has jurisdiction under 28 U.S.C. § 1257(a) (2001).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. I

Religious and political freedom.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

This cause came on a Motion for Judgment filed by Petitioner, JAE-WOO CHA, in the Circuit Court of Fairfax County based upon the following causes of action:

a. Wrongful termination against the Korean Presbyterian Church of Washington, (hereinafter "KPCW") in which he alleged a breach of employment contract, and a termination in conflict with Virginia public policy, in retaliation for refusing to participate in the solicitation of funds under false pretenses and for disclosing financial misconduct;

b. Tortious interference with contract against Yong Ho Kim, Ko Do Sik, Chi Whan Kim, Jung Kuk Kim, David Whang Soo Han, and Taek Yong Kim (hereinafter "the individual Defendants") for tortiously inducing the breach of employment contract by KPCW by making knowingly false and misleading charges against the Petitioner to conceal their own financial misconduct; and

c. Defamation against Ko Do Sik and Chi Whan Kim for the specific false statements which each made to certain assembled bodies of church members and officials, impugning the honesty, integrity and conduct of the Appellant, causing his termination and significantly diminishing his ability to be employed in his chosen profession.

For these causes of action the Petitioner sought $982,000 in damages.

Defendant KPCW filed an Answer and Grounds of Defense and filed a Cross-Complaint against the individual Defendants. The individual Defendants moved to dismiss the Motion for Judgment and the Cross-Complaint for lack of subject matter jurisdiction in that they claimed the causes of action violate the Establishment Clause of the United States and Virginia Constitutions.

By letter opinion dated August 23, 2000, the Honorable Jonathan C. Thacher, granted the motions to dismiss. The final order was entered on the 5th day of September, 2000, whereupon the Petitioner filed a motion to reconsider, which motion was denied by Order entered on the 26th day of September, 2000.

Petitioner then petitioned for a writ of certiorari and the Supreme Court of Virginia granted a writ. However, upon oral argument and briefs submitted, the Supreme Court of the Commonwealth of Virginia affirmed the lower court's rulings, citing the First Amendment as a preclusion to Petitioner's causes of action. Petitioner now seeks redress through the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT

I. LIKE PROPERTY DISPUTES, TORT AND CONTRACT CLAIMS TO WHICH CHURCHES, THEIR CLERGY OR MEMBERS ARE PARTIES, INVOLVING NEUTRAL PRINCIPLES OF LAW, ARE WITHIN THE JURISDICTION OF CIVIL COURTS.

The issue of whether contract and tort claims fall within the jurisdictional power of civil courts is an issue of first impression for this Court. *See Swanson v. Roman Catholic Bishop of Portland*, 692 A.2d 441, 446-47 (Me. 1997) (Lipez, J., dissenting) (stating this is "an area of the law in which the U.S. Supreme Court cases offer limited guidance and there remains significant doctrinal uncertainty."); *see also* Scott C. Idleman, *Tort Liability, Religious Entities, and the Decline of Constitutional Protection*, 75 Ind. L.J. 219, 252-60 (2000) (discussing at length the state of flux in this area of the law). The closest this Court has come in fashioning a rule in this unique area is *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979). The *Jones* decision pronounced the "neutral principles" approach, but did so with respect to the property dispute before it. However, subsequent to *Jones*, Justice Marshall in a dissent to a denial of a writ for certiorari stated that "[b]ecause religious organizations may own property and enter into contracts, it is inevitable that they will become involved in legal disputes." *Little v. First Baptist Church*, 475

U.S. 1148, 1149, 106 S. Ct. 1802; 1803, 90 L. Ed. 2d 347, 348 (1986) (Marshall, J., dissenting).

Not only is it inevitable, but such disputes have come to fruition. The question turns on the scrutiny required in terms of interpretation of church laws. This Court has articulated the following:

> But it is a very different thing where a subject matter of dispute, strictly and purely ecclesiastical in its character, — a matter over which the civil courts exercise no jurisdiction, — *a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them,* - becomes the subject of its action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted; and, in a sense often used in the courts, all of those may be said to be questions of jurisdiction. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713-14, 96 S. Ct. 2372, 2382-83, 49 L. Ed. 2d 151, 165-66 (1976) (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733-34, 20 L. Ed 666, 678 (1871)).

The Respondents in this case would like the courts to find entanglement with church doctrine and polity to shield themselves from ultimate liability. However, such a finding flies in the face of the framework established by this Court. For example, a church enters into a contract with a painter to paint the inside of the church and the doors, and agrees to pay

him $5,000-$2,000 will be paid to him prior to beginning the job, and the balance will be paid to him upon completion. The painter takes the initial payment and never completes the task. Can the church bring a breach of contract suit against the painter? It would seem that such a suit could be maintained, even though *Jones* never expressly authorized such suits. There is no religious analysis required of the court. However, what if the painter completes the job but the church does not pay him the $3,000 it owes him — is he able to sue the church? It would seem illogical that he could not. Would this Court cloak the church in the First Amendment to shield it from a simple contract dispute, having nothing to do with faith or doctrine, simply because it does not involve property? If the answer to this question is in the negative, then the Respondents' arguments fail because there is no meaningful distinction between property disputes and ones sounding in tort and contract.

"At what point is the line drawn that a state court has excessively entangled with canon law? There is no bright line and courts are currently struggling with the issue. The first amendment does not bar application of a secular standard to certain tortious conduct in a church setting." *Ross v. Ross*, 1998 Conn. Super. LEXIS 2248, No. FA 970162587S at *16 (Stamford, Ct. Aug. 10, 1998) (citing *Mullen v. Horton*, 700 A.2d 1377, 46 Conn. App. 759 (1997)). This point was made in *Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church*, 98 F.3d 78, 91-92 (3d Cir. 1996), which stated:

> The appropriate level of review turns not on the type of civil dispute involved but on the extent to which the dispute implicates questions of religious doctrine or polity.

Id.

Furthermore, as a matter of policy, the "neutral principles" approach should be extended beyond the property dispute context. To refuse to apply the "neutral principles" approach to non-property disputes involving religious defendants would in essence give hierarchical churches and religious officials within religious churches immunity from tort and contractual disputes. This immunity is not what was intended by the First Amendment as it completely forecloses any remedies a litigant may have against a religious entity.

Therefore, this Court should focus on the forefront issue of whether the current case can be decided without trespassing into the "religious thicket" by having to interpret church law. If this Court determines the current case can be decided without getting into the "religious thicket," then the issues of whether a hierarchical church is involved or whether the dispute relates to church property are irrelevant.

II. THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT GRANT RELIGIOUS DEFENDANTS ABSOLUTE IMMUNITY FROM TORT AND CONTRACT LIABILITY.

The First Amendment "requires the independence of the government from religion." *Ross v. Ross*, 1998 Conn. Super. LEXIS 2248, No. FA 970162587S at *15 (Stamford, Ct. Aug. 10, 1998). Said constitutional provision prohibits any "law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. Const. Amend. I. The amendment "embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 60 S. Ct. 900, 903, 84 L. Ed. 1213, 1218 (1940).

Specifically, this Court has ruled that the First Amendment to the United States Constitution does not preclude courts from deciding property disputes between churches and their members so long as it is possible for the court to render its decision using "neutral principles of law." *See Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979). Although state courts of last resort and United States courts of appeal have rendered decisions regarding this important issue, this Court has not. Given the state of the law as it stands currently, a decision by this Court is necessary to reconcile the theoretical differences between the various courts.

A. THE CONCEPT OF TOTAL DEFERENCE TO CHURCH AND CLERGY MEMBERS CONFERS ABSOLUTE IMMUNITY UPON THESE DEFENDANTS, WHICH CONTRAVENES INDIVIDUALS' RIGHTS TO CIVIL REDRESS.

Total deference by civil courts should not be automatically given in matters involving churches, their members and clergy. Although presenting questions of first impression in this Court, the approach which Petitioner urges has strong roots in this Court's jurisprudence, and necessitates only an inquiry into whether the cause of action requires an examination of church faith and doctrine. If it does, then deference is to be given to the church's decision and action. If however, resolution of the dispute does not lead the court into the "religious thicket," then a court is perfectly capable of deciding the case using neutral principles of law.

Thus, civil courts are not wholly divested of jurisdiction under the free exercise and establishment clauses to adjudicate cases involving churches, their clergy and

membership that can be decided without reference to questions of faith and doctrine. *See Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979). While a civil court must accept the ecclesiastical decisions of hierarchical church tribunals as it finds them, *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372, 2375, 49 L. Ed. 2d 151, 152 (1976), it may adjudicate matters that have nothing to do with those decisions.

An extreme but very powerful illustration may aid this Court in analyzing the case before it. A church minister, through gross negligence, kills a church member in the middle of a meeting. Consequently, under the Church's law, the minister is subjected to defrockment hearings (or the like). However, somehow the minister prevails in the defrockment action, thereby maintaining his status as a minister.

Thereafter, the victim's family challenges the findings of the defrockment hearings in state court. Under this Court's ruling in *Serbian*, Petitioner would concede that the court lacks subject matter jurisdiction. In order for a court to determine whether the decision of the church in maintaining the minister's status was lawful, the court would most certainly have to inquire into church polity, the church constitution, faith, doctrine, teachings and other "laws" of the church. The court would have to delve into the reasons why the minister could maintain the status quo, effectively second-guessing the propriety of the proceedings. Clearly, a court has no business treading on the sanctity of proceedings such as defrockment, and Petitioner acknowledges this point.

Suppose, however, the victim's family files a wrongful death action against the minister in state court. The elements of wrongful death clearly have no religious foundation.

At no time does the court have to examine the church constitution to ascertain whether there was a death or a wrongful act — those adjudications are factually and legally driven. These determinations are based upon neutral principles of law. All inquiries and forms of civil redress do not activate the First Amendment's prohibition against establishment of religion. Persons do not shed their civil rights at the doors of a church. It is an unnecessary leap in logic to cloak all transactions with a presumption of First Amendment protection without examination of the cause of action being brought. Just because one of the parties suing or is being sued happens to be a church or church employee or official does not automatically inject religion into the analysis.

In *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed 666 (1871), in which this Court first prohibited courts from inquiring into matters of religious doctrine, and all subsequent cases, there has been a "common-thread" threshold determination made — a determination which turns on the remedy sought and whether awarding the relief prayed for allows for the use of neutral principles of law. This approach has been a consistent linchpin in well over a century of this Court's decisions.

Moreover, this concept has been recognized by the Virginia Supreme Court, such that the court remains outside the "religious thicket," and church members may resort to the civil courts to protect their rights. *Reid v. Gholson*, 229 Va. 179, 188, 327 S.E.2d 107, 112 (1985). However, in the case at bar, the Virginia Supreme Court erred in its application of *Reid* and *Watson*.

In *Reid*, the Virginia Supreme Court observed that the underlying question is "simply whether the court can decide the case by reference to neutral principles of law, without reference to issues of faith and doctrine." *Id.* Notwithstanding, in the present case, the Virginia Supreme Court ruled that the causes of action brought by Petitioner nevertheless are inextricably tied to faith and doctrine to such an extent that it would be impossible to decide the case upon neutral principles of law. *See Cha v. Korean Presbyterian Church*, 262 Va. 604, 615, 553 S.E.2d 511, 516 (2001).

This logic is flawed. In this case, neither the church's rules, policies, nor customs are relevant to the tort or contract claims. Thus, the Virginia Supreme Court erred in applying the "neutral principles of law" framework to the present case.

B. OTHER JURISDICTIONS HOLD THAT CIVIL COURTS HAVE SUBJECT MATTER JURISDICTION OVER TORT AND CONTRACT DISPUTES AGAINST RELIGIOUS DEFENDANTS WHEN THE LITIGATION TURNS UPON NEUTRAL PRINCIPLES OF LAW.

There is currently a split of authority among the various state and federal jurisdictions. The split basically divides those jurisdictions which (1) give credence to the argument that it matters not what the cause of action is, but who the defendants are, or (2) analyze the cause of action for secular elements. Petitioner contends that the latter option is more consistent with both the spirit and letter of this Court's rulings whereas the former approach, essentially adopts a *per se* rule that prohibits any type of action from being brought against a church, its members or clergy.

1. Many jurisdictions hold that the First Amendment does not deprive a state court from deciding litigation with religious defendants when such litigation turns upon neutral principles of law.

Currently, it is unclear as to where the line is drawn between secular and ecclesiastical determinations. In *Marshall v. Munro*, 845 P.2d 424 (Ala. 1993), the Alaska Supreme Court dealt with a case that essentially mirrors the case at bar. The plaintiff in that case, a pastor, accepted a job with a Presbyterian church in Tennessee. The church recanted its offer upon receiving derogatory information from the defendant, a high ranking official in the Presbyterian system. In response, the pastor brought suit claiming, among other things, defamation and wrongful interference with contract. *Marshall,* 845 P.2d at 425.

The *Marshall* court observed that the defamation and interference claims did not require the court to question the church's authority or decision making bodies. *Id.* at 428. The pastor was merely seeking to address a personal wrong done by an individual who happened to be a church official. The pastor pointed out that "just as a battery between two clergy would not make the battery an 'ecclesiastical' issue, the fact that both [the parties are church officials] does not make the case 'ecclesiastical.' " *Id.* at 427.

Thus, since the case could be decided simply by looking to questions of neutral principles of law the state court had subject matter jurisdiction to hear the defamation and wrongful interference with contract claims. In other words, the court was not being asked to tread into the "religious thicket." Thus, deference was not given and the Alaska

Supreme Court saw no need to apply the *Watson* hierarchal/ congregational analysis.

Further, the Colorado Supreme Court, allowed a civil court to hear negligent hiring and breach of fiduciary duty claims against religious defendants. In *Moses v. The Diocese of Colorado*, 863 P.2d 310 (Colo. 1993), Colorado's Supreme Court held that a Colorado court had subject matter jurisdiction to hear tort claims against a church and a bishop. In that case, the plaintiff sought counseling from a priest, Father Robinson. The plaintiff had a long history of mental illness which Father Robinson took advantage of by entering into a series of sexual relationships with the plaintiff. *Id.* at 313.

The plaintiff brought suit against the church and the bishop who was Father Robinson's superior. The defendants raised First Amendment defenses. The *Moses* court responded by stating "[t]he First Amendment to the United States Constitution does not grant religious organizations absolute immunity from tort liability." *Id.* at 319. The *Moses* court also held:

> [o]ur decision does not require a reading of the Constitution and Canons of the Protestant Episcopal Church or any other documents of church governance. Because the facts of this case do not require interpreting or weighing church doctrine and neutral principles of law can be applied, the First Amendment is not a defense. . . .

Moses, 863 P.2d at 321.

Moreover, the Third Circuit applying New Jersey law, allowed a civil court to hear negligent hiring and breach of fiduciary duty claims against religious defendants. The court in *Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church*, 98 F.3d 78 (3d Cir. 1996), allowed a suit against religious defendants, holding that the claims could be decided upon neutral principles of law. In that case, the Third Circuit noted that the courts of New Jersey, whose law governed the litigation, were not concerned about church organization but about whether the courts could resolve the particular question without becoming entangled in questions of religious doctrine or governance. *Id.* at 94. The court discussed at length a similar issue to those involved in the present case and concluded that the organization of a church (i.e., if the church is hierarchical or congregational) does not matter if a case can be decided upon neutral principles of law.

The Third Circuit noted that "the extent to which a court may permissibly inquire into disputes of this kind turns on the specific elements of the inquiry itself and the degree to which it might trench upon doctrinally sensitive matters, rather than on conclusory labeling of the whole dispute as either 'secular' or 'ecclesiastical.' " *Id.* at 95. Therefore, the bare fact that a claim involves a hierarchical or congregational church is less significant than whether neutral principles of law can be applied by a court to settle a dispute. If neutral principles can be applied, then the question of organization and how it impacts the deference given to a church decision is not relevant.

2. Some jurisdictions apply a per se or compulsory deference rule that forbids a civil court from hearing a claim involving religious defendants which in effect gives religious defendants absolute immunity to tort claims.

There is clearly a split of authority on the issue of what is considered an ecclesiastical suit barred by the First Amendment. The Respondents, in their briefs submitted to the Virginia Supreme Court, cited some of these cases, including *Yaggie v. Indiana-Kentucky Synod, Evangelical Lutheran Church in America*, 860 F. Supp. 1194 (W.D. Ken. 1994). However, for reasons of sound public policy and to be in accord with this Court's jurisprudence, Petitioner argues that this Court should allow courts to hear cases involving religious defendants when such claims can be decided on neutral principles of law.

Essentially, compulsory deference allows church clerics to hide behind the cloak of the church, committing any and all acts of mischief they so choose, as long as their acts bear some relation to the church. The First Amendment is not a shield from liability for the protection of defendants — it is a shield from the government establishing religion through the courts. Such a distinction is necessary to parse through the arguments Respondents and the Virginia Supreme Court present. Therefore, the compulsory deference theory should be passed on by this Court as contrary to the First Amendment.

C. THE SUPREME COURT OF VIRGINIA ERRED IN APPLYING THE FIRST AMENDMENT TO PETITIONER'S CAUSES OF ACTION AND ITS DECISION RESULTED IN ESSENTIALLY GIVING ABSOLUTE IMMUNITY TO THE RESPONDENTS.

The Supreme Court of the Commonwealth of Virginia erred in its analysis by applying what is tantamount to per se deference to church entities. Not all causes of action against churches, their clergy or their members implicate the First Amendment's prohibition on civil court inquiry into church doctrine, faith and polity. The question as to whether individuals tortiously interfere with a contract, whether a contract has been breached and whether individuals defame another implicate nothing more than the essential elements necessary for disposition by the fact finder. These questions can be reconciled by utilizing neutral principles of law. No analysis into the church constitution, laws or other dictates is required. The Virginia Supreme Court, however, disagreed and stated:

> Applying the aforementioned principles, we hold that the circuit court correctly concluded that it lacked subject matter jurisdiction to review the plaintiff's claims against the Korean Presbyterian Church. Resolution of the plaintiff's claims by a civil court would have required that the circuit court adjudicate issues regarding the church's governance, internal organization, and doctrine, and such judicial intervention would have limited the church's right to select its religious leaders. *Cha v. Korean Presbyterian Church*, 262 Va. 604, 613, 553 S.E. 2d 511, 515 (2001) (ruling as to the breach of contract claim). . . .

> Without question, had the circuit court exercised subject matter jurisdiction of the plaintiff's motion for judgment, the court would have become entangled in issues regarding the church's governance as well as matters of faith and doctrine. And, as we have already held, ecclesiastical decisions regarding the appointment and removal of pastors are generally beyond the jurisdiction of secular courts. *Cha*, 262 Va. at 613, 553 S.E. 2d at 515 (2001) (ruling as to the tortious interference with contract claim).

This case simply deals with whether a contract for employment was breached and whether the defendants tortiously interfered with that contract. One cannot leap from the contract breach to church governance and issues of faith and doctrine without establishing the reasons for the breach. Individuals cannot abuse the civil rights of a pastor merely because he is employed by the church.

Thus, whether the individual defendants utter defamatory statements is also clearly a question settled by the neutral principles approach. The Virginia Supreme Court's cursory and deferential analysis is erroneous, to wit:

> The individual defendants who purportedly uttered defamatory remarks about the plaintiff were church officials who attended meetings of the church's governing bodies that had been convened for the purpose of discussing certain accusations against the plaintiff. We can only conclude that if a civil court were to exercise jurisdiction of the plaintiff's motion for judgment under these circumstances, the court would be compelled to consider the church's doctrine and

> beliefs because such matters would undoubtedly affect the plaintiff's fitness to perform pastoral duties and whether the plaintiff had been prejudiced in his profession. Neither the Free Exercise Clause nor Article I, §§ 16 of the Constitution of Virginia permits a civil court to undertake such a role. *Cha*, 262 Va. at 615, 553 S.E.2d at 516 (2001).

Basically, the Virginia Supreme Court is of the opinion that simply because the defendants were church officials, they have absolute immunity from civil causes of action. This is not the intention of the First Amendment. Therefore, this Court should grant the Petitioner's request for Writ of Certiorari.

CONCLUSION

This Court has not had the opportunity to pass on whether the Jones decision extends beyond property disputes into other areas of law, such as contract and tort law. The Supreme Court of Virginia has circumvented this issue and basically ruled that the First Amendment is a shield for churches, its clergy and members to commit as many acts of civil wrongdoing as they please. It is doubtful that the framers of our Constitution intended such an inequitable result. Therefore, Petitioner respectfully requests that this Court grant his Petition for Writ of Certiorari so that this Court may set forth a clear, bright line rule as to how such issues should be handled henceforth.

Respectfully submitted,

JAMES J. HARNEY
Counsel of Record
WILLIAM E. HASSAN
KIMBERLEY A. MURPHY
RYAN M. MATTSON
HALE & HASSAN, CARLSON
& PENN, PLC
Attorneys for Petitioner
10511 Judicial Drive
Fairfax, Virginia 22030
(703) 591-4900

APPENDIX

APPENDIX A — ORDER OF THE SUPREME COURT OF VIRGINIA DATED NOVEMBER 2, 2001

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 2nd *day of* November, 2001.

Record No. 003022
Circuit Court No. L188601

Jae-Woo Cha,

Appellant,

against

Korean Presbyterian Church of Washington, et al.,

Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County on the 5th day of September, 2000.

For reasons stated in writing and filed with the record, the Court is of opinion that there is no error in the judgment appealed from. Accordingly, the judgment is affirmed. The appellant shall pay to the appellees thirty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:

s/ [illegible]
Clerk

APPENDIX B — ORDER OF THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA DATED AND ENTERED SEPTEMBER 26, 2000

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Law No. 188601

JAE WOO CHA,

Plaintiff,

v.

KOREAN PRESBYTERIAN CHURCH OF WASHINGTON, *et al.*,

Defendants.

ORDER

UPON CONSIDERATION of Plaintiff's Motion to Reconsider this Court's ruling to dismiss this cause for lack of subject matter jurisdiction; it is

ORDERED that the said motion is hereby denied.

ENTERED 9-26-00.

s/ Jonathan C. Thacher
Jonathan C. Thacher
Judge, Circuit Court of Fairfax County

APPENDIX C — ORDER OF THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA DATED AND ENTERED SEPTEMBER 5, 2000

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

AT LAW NO: 188601

JAE-WOO CHA,

Plaintiff,

vs.

KOREAN PRESBYTERIAN CHURCH OF WASHINGTON, et al.,

Defendants.

ORDER

THIS CAUSE came on to be heard on the individual defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and on the Court's own motion as to Count I of the Motion for Judgment; and

UPON CONSIDERATION of the papers filed and the argument of counsel, and for the reasons stated in the Court's opinion letter dated August 23, 2000; it is

ORDERED that the plaintiff's claims set forth in the motion for judgment be, and hereby are, dismissed; and it is further

Appendix C

ORDERED that the "cross complaint" filed herein by defendant Korean Presbyterian Church of Washington be, and hereby is, dismissed without prejudice.

AND THIS CAUSE IS FINAL.

ENTERED this 5th day of September, 2000.

s/ Jonathan C. Thacher
Jonathan C. Thacher
Judge, Circuit Court of Fairfax County

Supreme Court, U.S.
FILED
011264 JAN 30 2002

No. 01-

IN THE

Supreme Court of the United States

JAE-WOO CHA,

Petitioner,

v.

KOREAN PRESBYTERIAN CHURCH OF WASHINGTON, CHI WHAN KIM, TAEK YONG KIM, YONG HO KIM, DAVID KWANG SOO HAN, KO DO SIK, JUNG KUK KIM,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF VIRGINIA

SUPPLEMENTAL APPENDIX

JAMES J. HARNEY
Counsel of Record
WILLIAM E. HASSAN
KIMBERLEY A. MURPHY
RYAN M. MATTSON
HALE & HASSAN, CARLSON & PENN, PLC
Attorneys for Petitioner
10511 Judicial Drive
Fairfax, Virginia 22030
(703) 591-4900

172051

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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SUPPLEMENTAL APPENDIX — LETTER FROM THE NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA DATED AUGUST 23, 2000

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009
(703) 246-2221 Fax: (703) 385-4432

COUNTY OF FAIRFAX CITY OF FAIRFAX

* * *

August 23, 2000

Vanessa G. Hardee, Esquire
301 W. Maple Avenue, Suite 4C
Vienna, Virginia 22180-4301

Timothy B. Hyland, Esquire
Leffler & Hyland
4163 Chain Bridge Road
Fairfax, Virginia 22030-4102

Edward Grove, Esquire
Brault, Palmer, Grove, Zimmerman, White & Mims
10533 Main Street
Fairfax, Virginia 22030-1010

Re: *Jae-Woo Cha v. Korean Presbyterian Church, et al.*
Law No. 188601

Dear Counsel:

This matter came before the Court on July 21, 2000 on Defendants' Chi Whan Kim, Taek Yong Kim, Yong Ho Kim,

Supplemental Appendix

David Kwang Soo Han, Do Sik Ko, and Jung Kook Kim (the "Individual Defendants") Motion to Dismiss for Lack of Subject Matter Jurisdiction. For the reasons set forth below, this case is dismissed.

Factual Background

In his Motion for Judgment, Plaintiff avers that he was employed by the Korean Presbyterian Church of Washington (Church) under a two-year employment contract beginning in October 1997. According to Plaintiff, in October 1999, the Church renewed his employment agreement for a term of one year. Plaintiff further avers that in October 1999 he attended a meeting with members of the Church's congregation in which members discussed their belief that an independent auditor should be hired to investigate possible financial improprieties by several Church leaders and members involving Church funds.

Plaintiff alleges that after he agreed with other Church members that an independent auditor should be hired and the Church's financial records disclosed, several of the Individual Defendants threatened that he would be fired if he did not change his position. When Plaintiff refused to comply, several of the Individual Defendants allegedly began conspiring to remove Plaintiff from his position. On December 5, 1999, a number of the Individual Defendants allegedly misrepresented, to meetings of the Church's Deacons and the Church's Elders' Committee, that Plaintiff had borrowed funds from Church members. Shortly thereafter, on December 11, 1999, the Church's Elders' Committee purportedly voted to terminate Plaintiff's employment.

Supplemental Appendix

Plaintiff's Motion for Judgment contains three counts. According to Count I, the Church wrongfully terminated his employment in order to conceal the financial improprieties and punish Plaintiff for advocating disclosure of Church financial records. In Count II, Plaintiff alleges that the Individual Defendants tortiously interfered with his contractual rights by making or encouraging the making of statements to the Church's Elders' Committee that plaintiff had borrowed money from Church members in an effort to induce the Church to terminate Plaintiff's employment. Finally, in Count III, Plaintiff claims that Defendants Do Sik Ko and Chi Whan Kim defamed him by making statements regarding Plaintiff's borrowing of money from Church members at the December 5, 1999 Deacons' and Elders' Committee meetings.

Analysis

This Court lacks subject matter jurisdiction over this case. Both the First Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment, and the Virginia Constitution Article I, § 16 contain free exercise and establishment clauses. The free exercise clause protects against government interference with the practice of religion. The establishment clause prevents excessive government support of and entanglement with religion. See *Houston v. Mile High Adventist Academy*, 846 F. Supp. 1449, 1455 (D. Colo. 1994).

Civil courts are prohibited from interfering in ecclesiastical disputes where questions of faith or doctrine are involved. See *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. at 709; *Reid v. Gholson*, 229 Va. 179, 187 (1985) ("The constitutional guarantees of religious

freedom have no deeper roots than in Virginia, where they originated, and nowhere have they been more scrupulously observed."). Where, however, a case may be decided by neutral principles of law, without reference to principles of faith and doctrine, church members may resort to the civil courts to protect their rights. See *Reid*, 229 Va. at 188.

In *Reid*, the Supreme Court of Virginia explained that a decision by a governing body or internal tribunal of an hierarchical church is treated as an ecclesiastical determination constitutionally immune from review by a civil court. Internal government disputes in hierarchical churches are inextricably linked to questions of faith and doctrine, therefore not properly subject to judicial review. See *id.* at 189. In contrast, churches with a congregational structure are governed by the will of a majority of the members analogous to a democratic system of government, so ecclesiastical law and internal tribunals are absent. Internal procedures in congregational churches are subject to review by civil courts because neutral principles of law may be applied. See *id.*

The Presbyterian Church is widely recognized as an hierarchical organization. See e.g., *Jones v. Wolf*, 443 U.S. 595, 607 (1979); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. 440, 442 (1969). The Church in this case is governed by committees known as the Session and the Elders' Committee composed of senior members of the Church. Each of the Individual Defendants in this case held a position of power within the Church. Three of the Defendants were members of the Elders' Committee, two were Deacons, and one was the Senior Pastor. Therefore, as an hierarchical organization, the Church's tribunals and internal government decisions are not reviewable by this Court.

Supplemental Appendix

As to Count 1, the wrongful termination count, Plaintiff contends that the existence of his employment contract permits this court to hear the claims in this case without involving itself in ecclesiastical concerns. A civil court may review a church's contract where neutral-principles of law are determinative. See *Jones v. Wolf*, 443 U.S. 595, 606 (1979). Freedom to select clergy without government interference, however, is given constitutional protection where no improper methods of choice are proven. *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952). The United States Supreme Court has, in dictum, mentioned an exception that would permit a civil court to review acts of church tribunals in cases of fraud or collusion. See *Serbian Orthodox*, 426 U.S. at 712. However, even if Plaintiff's Motion for Judgment alleges facts sufficient to support a finding of fraud or collusion, this Court is unaware of and the parties do not present any cases in which the "fraud or collusion" exception has been applied.

Plaintiff in this case would ask the Court to inquire into the reasons for Plaintiff's termination, not merely whether Plaintiff in fact had an employment contract with the Church. Because this Court is not permitted to engage in review of the Church's faith-based or internal government decisions, Plaintiff's wrongful termination claim must be dismissed.

With respect to Counts II and III, the tortious interference and defamation claims, the wrongs alleged arise from discussions and decisions made during a Deacons' meeting and an Elders' Committee meeting. At a Deacons' meeting with 108 of the Church's 164 Deacons in attendance, Defendant Ko Do Sik allegedly accused Plaintiff of borrowing money from Church members and not returning the money. As a result of

this meeting, the Elders' Committee convened to discuss the allegations against Plaintiff, subsequently voting to terminate his employment.

As with the wrongful termination claim, hearing the merits of Plaintiff's tortious interference and defamation claims would require this Court to delve into the "religious thicket" of faith and doctrinal questions related to internal church governance. See *Reid*, 229 Va. at 189. Whether the statements by Individual Defendants regarding Plaintiff's borrowing of funds from members were true or were merely an attempt to induce the Church to remove Plaintiff from his position, this Court is prohibited from reviewing the meetings and decisions of the Church's Committees to terminate a pastor. See e.g., *Minker v. Baltimore Annual Conference*, 894 F.2d 1354, 1359 (D.C. Cir. 1990) ("[A]ny inquiry into the Church's reasons for asserting that [Plaintiff] was not suited for a particular pastorship would constitute an excessive entanglement in its affairs."); *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575, 1578 (1st Cir. 1989) (inquiry into the reasons for minister's discharge would plunge court into a "maelstrom of Church policy, administration, and governance."). Reviewing these aspects of the meetings would impermissibly inject this Court into the internal governance of the Church.

At oral argument, Plaintiff also argued (as does Defendant Church in both its Answer and Crossclaim) that the actions taken by the Individual Defendants giving rise to the defamation and tortious interference claims were without the authority or consent of the Church. Therefore, Plaintiff argues that constitutional freedoms of religion are not

implicated and the claims against the Individual Defendants do not require dismissal.

Determining whether the Individual Defendants acted with the authority of the Church would require this Court to interpret religious, faith-based documents relating to the internal governance of the Church. This Court is not the proper tribunal to interpret such documents. As the United States Supreme Court noted:

> Each of these large and influential bodies . . . [including Presbyterian churches] has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collection of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.

Serbian Orthodox, 426 U.S. at 715, n. 8 (quoting *Watson v. Jones*, 80 U.S. 679, 729 (1871)).

In its Answer and Grounds of Defense, the Church explains that the authority of the Session, Deacons, Elders, ministers, and other officials are derived from the Book of

Church Order (BCO) as published by the Presbyterian Church of America. The facts giving rise to the allegations in this case occurred during meetings of Church leaders. This court is constitutionally prohibited from reviewing whether Deacons or Elders complied with or had authority to act under the BCO, a religious document. Such a review would require this Court to both interpret the BCO and make faith-based determinations concerning the roles and scope of authority of Church leaders. As noted above, this Court is not permitted to engage in faith-based determinations or determinations relating to Church governance. Therefore, Plaintiff's claims against the Individual Defendants for tortious interference, and against Do Sik Ko and Chi Whan Kim for defamation, must be dismissed.

Counsel for Individual Defendants should prepare an appropriate order dismissing this case, and after endorsement by Counsel for the Church and Counsel Plaintiff, should forward the proposed order to my chambers. I am placing this case on the motions day docket for September 22, 2000. In the event that an order has been forwarded to my chambers, and counsel confirm its entry with my law clerk, Mike Mattock, on or before September 22, 2000, counsel need not appear on September 22, 2000. Otherwise, Counsel for Individual Defendants should present his proposed order on September 22.

Sincerely,

s/ Jonathan C. Thacher
Jonathan C. Thacher
Circuit Court Judge, Fairfax County